

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 09-02306 CW

MIKESHA MARTINEZ, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

ORDER DENYING FRESNO
DEFENDANTS' MOTION
TO DISMISS AND SEVER

Plaintiffs, In-Home Support Services (IHSS) consumers and unions representing IHSS providers, filed suit against various state officials (State Defendants) and against Fresno County and Fresno County In-Home Support Services Public Authority (Fresno Defendants) seeking to enjoin reductions in IHSS providers' wages and benefits. Fresno Defendants have filed a motion to dismiss the claims against them, asserting that Plaintiffs lack standing to bring, and fail to state, a claim for relief against them. Fresno Defendants have also moved to sever the claims asserted against them from the claims against State Defendants. Plaintiffs oppose the motions. The matter was heard on September 17, 2009. Having considered oral argument and all of the papers submitted by the parties, the Court denies the motions to dismiss and sever.

BACKGROUND

IHSS providers give in-home assistance to low-income elderly and disabled individuals through California's Medi-Cal program.

1 The cuts to their wages were scheduled to go into effect July 1,
2 2009. Plaintiffs filed this complaint on May 26, 2009.

3 Plaintiffs' complaint asserts four claims for relief. The
4 first two claims, asserted only against State Defendants, challenge
5 Welfare and Institutions Code § 12306.1(d)(6) as violative of the
6 federal Medicaid Act. The third and fourth claims, asserted
7 against both State Defendants and Fresno Defendants, bring
8 challenges under the Americans with Disability Act (ADA), 42 U.S.C.
9 § 12132 and the Rehabilitation Act, 29 U.S.C. § 794(a). In these
10 claims, Plaintiffs allege that reducing the wages and benefits of
11 IHSS providers will create a shortage of providers and that some
12 IHSS consumers will be unable safely to remain at home without IHSS
13 services and will be forced to enter nursing homes or other
14 residential institutions. Plaintiffs claim that this violates the
15 anti-discrimination provisions of the ADA and the Rehabilitation
16 Act. "Unjustified isolation [of people with disabilities] . . . is
17 properly regarded as discrimination based on disability." Olmstead
18 v. L.C. ex rel. Zimring, 527 U.S. 581, 597 (1999).

19 On June 4, Plaintiffs filed a motion for a preliminary
20 injunction based on all four claims for relief. On June 26, the
21 Court issued a preliminary injunction enjoining implementation of
22 Section 12306.1(d)(6) based on Plaintiffs' first claim for relief.
23 The Court concluded that the statute violated the procedural
24 requirements of the federal Medicaid Act. The Court noted:

25 IHSS consumers will suffer immediate and irreparable harm
26 unless the Court issues a preliminary injunction. The wage
27 reductions will cause many IHSS providers to leave employment,
28 which in turn will leave consumers without IHSS assistance.
The consumers' quality of life and health-care will be greatly
diminished, which will likely cause great harm to disabled
individuals. For instance, the declarations submitted by

1 Plaintiffs describe harms ranging from going hungry and
2 dehydration, to falls and burns, to an inability ever to leave
3 the home. Institutionalizing individuals that can comfortably
4 survive in their home with the help of IHSS providers will
5 "cause Plaintiffs to suffer injury to their mental and
6 physical health, including a shortened life, and even death
7 for some Plaintiffs." Crabtree v. Goetz, 2008 WL 5330506, at
8 *30 (M.D. Tenn.).

9 Order Granting Preliminary Injunction at 10-11. The Court did not
10 rule on Plaintiffs' likelihood of success on their second, third or
11 fourth claims for relief. Id. at 10.

12 In a later order clarifying the preliminary injunction, the
13 Court explained that the injunction required State Defendants to
14 "rescind the State's approval of all county wage reduction requests
15 which were submitted after February 20, 2009, to be effective July
16 1, 2009." Amended Prelim. Inj. at 2. Fresno Defendants then asked
17 the State not to rescind its approval of their wage reduction
18 request. They wrote a letter to California Department of Social
19 Services (CDSS), which stated that, in addition to reducing their
20 rate in response to Section 12306.1(d)(6), they had a separate and
21 independent reason for reducing the rate. They claimed that they
22 based the reduction on a section of the contractual Memorandum of
23 Understanding (MOU) entered into between the County of Fresno and
24 Plaintiff Service Employees International Union United Healthcare
25 Workers West in September, 2006. The MOU provides for the
26 possibility of a rate reduction if Fresno County's funding from the
27 Realignment Act were reduced.¹ The Court held that the letter
28 "merely expresses a second reason for [Fresno's] initial rate
change request submitted on April 30, 2009" and "does not

¹Realignment Act funding comes from 1991 legislation that increased sales taxes and vehicle license fees for specific social services and mental health and health programs.

1 constitute a second rate change request." Order Further Clarifying
2 Inj. at 6. The Court concluded, "Before the State may approve a
3 rate reduction for . . . Fresno County, it must receive from the
4 County a new and separate written request conforming to all the
5 requirements of law and regulation, based on a reason other than
6 § 12306.1(d)(6)." Id. at 7.² No evidence of such a request has
7 been submitted to date.

8 DISCUSSION

9 I. Subject Matter Jurisdiction

10 Subject matter jurisdiction is a threshold issue which goes to
11 the power of the court to hear the case. Federal subject matter
12 jurisdiction must exist at the time the action is commenced.
13 Morongo Band of Mission Indians v. Cal. State Bd. of Equalization,
14 858 F.2d 1376, 1380 (9th Cir. 1988). A federal court is presumed
15 to lack subject matter jurisdiction until the contrary
16 affirmatively appears. Stock W., Inc. v. Confederated Tribes, 873
17 F.2d 1221, 1225 (9th Cir. 1989).

18 Dismissal is appropriate under Rule 12(b)(1) when the district
19 court lacks subject matter jurisdiction over the claim. Fed. R.
20 Civ. P. 12(b)(1). A Rule 12(b)(1) motion may either attack the
21 sufficiency of the pleadings to establish federal jurisdiction, or
22 allege an actual lack of jurisdiction which exists despite the
23 formal sufficiency of the complaint. Thornhill Publ'g Co. v. Gen.
24 Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979); Roberts v.
25 Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987).

26
27 ²The Court grants Fresno Defendant's request to take judicial
28 notice of the publications submitted by federal, state, local
officials and agencies.

1 A. Standing

2 "Because standing and mootness both pertain to a federal
3 court's subject-matter jurisdiction under Article III [of the
4 Constitution], they are properly raised in a motion to dismiss
5 under Federal Rule of Civil Procedure 12(b)(1)." White v. Lee, 227
6 F.3d 1214, 1242 (9th Cir. 2000). Article III limits the
7 jurisdiction of the federal courts to "cases" and "controversies."
8 In order to satisfy the "case or controversy" requirement, a
9 plaintiff must show that: "(1) he or she has suffered an injury in
10 fact that is concrete and particularized, and actual or imminent;
11 (2) the injury is fairly traceable to the challenged conduct; and
12 (3) the injury is likely to be redressed by a favorable court
13 decision." Salmon Spawning & Recovery Alliance v. Gutierrez, 545
14 F.3d 1220, 1225 (9th Cir. 2008). "Article III standing requires an
15 injury that is actual or imminent, not conjectural or
16 hypothetical." Cole v. Oroville Union High Sch. Dist., 228 F.3d
17 1092, 1100 (9th Cir. 2000) (internal quotation marks omitted). A
18 plaintiff seeking declaratory and injunctive relief cannot rely
19 solely on a past injury; instead, he or she must demonstrate a
20 "very significant possibility of future harm" to warrant the
21 requested relief. San Diego County Gun Rights Comm. v. Reno, 98
22 F.3d 1121, 1126 (9th Cir. 1996).

23 A standing challenge can be either "facial" or "factual."
24 White v. Lee, 227 F.3d at 1242. A "facial" attack challenges a
25 complaint on its face and the court generally assumes the truth of
26 the allegations asserted therein. Id. In a "factual" attack, the
27 court "may look beyond the complaint to matters of public record
28 without having to convert the motion into one for summary judgment"

1 and it "need not presume the truthfulness of the plaintiffs'
2 allegations." Id.

3 Fresno Defendants assert that Plaintiffs' complaint on its
4 face does not allege injury and causation. Fresno Defendants argue
5 that Plaintiffs "set forth wild prognostications of future harm
6 based only upon conjecture and surmise." Motion at 9. The Court
7 disagrees. Plaintiffs have alleged that Fresno Defendants'
8 reduction of IHSS provider wages and benefits will cause
9 unjustified institutionalization of IHSS consumers. For instance,
10 the complaint alleges:

11 In the counties in which wages will be reduced, many IHSS
12 providers will be forced to leave IHSS employment to seek
13 higher paying jobs. Not all the vacancies created by IHSS
14 providers leaving their employment will be filled with new
15 IHSS providers.

16 As a result of these vacancies, many IHSS consumers in
17 these counties will be unable to find providers for any or all
18 of their authorized IHSS hours. These consumers will either
19 have to make do with reduced or eliminated IHSS services, or
20 be forced to enter nursing homes or other residential
21 institutions.

22 Complaint ¶¶ 58-59. These allegations on their face satisfy the
23 standing requirements.

24 Fresno Defendants also mount a factual standing challenge.
25 They argue that Plaintiffs cannot show redressability because the
26 MOU provides a separate and distinct contingency clause for the
27 reduction of Fresno County IHSS provider compensation. Fresno
28 Defendants assert that the terms of the MOU control the present
dispute and that Plaintiffs' injury cannot be redressed by this
lawsuit. However, the MOU has little bearing on Plaintiffs'
standing because the reason for Fresno Defendants' attempt to
reduce IHSS provider wages is less relevant to Plaintiffs' third

1 and fourth claims for relief than the actual impact of the wage
2 reduction.

3 Further, Fresno Defendants have not yet submitted a separate
4 rate reduction request to the State based on the MOU. Standing is
5 measured at the commencement of a lawsuit, Friends of the Earth,
6 Inc. v. Laidlaw Env'tl. Servs., Inc., 528 U.S. 167, 189 (2000), and
7 at the commencement of the present lawsuit, Fresno Defendants had
8 submitted a single rate change request based on Section
9 12306.1(d)(6). The State's approval of that rate change request
10 was rescinded by the Court's preliminary injunction and subsequent
11 orders clarifying the injunction. Fresno Defendants' intent to
12 submit a future rate change request based on the MOU is not
13 relevant at this juncture.

14 The Court also notes that Fresno Defendants' reliance on
15 Pritikin v. Department of Energy, 254 F.3d 791 (9th Cir. 2001), and
16 San Diego County Gun Rights, 98 F.3d 1121, is misplaced. In these
17 cases, conduct by an entity which was not a party to the litigation
18 would have been required to redress the plaintiffs' injuries. The
19 plaintiffs lacked standing because the court lacked authority to
20 issue an order to the relevant entity. Pritikin, 254 F.3d at 801
21 ("Pritikin has failed to show how ordering [defendant] DOE to
22 request funding would lead to the tangible result of a Hanford
23 medical monitoring program when only [non-party] ATSDR has the
24 power to actually initiate the program."); San Diego County Gun
25 Rights, 98 F.3d at 1130 ("[I]t is third-party weapons dealers and
26 manufacturers -- not the government defendants -- who have raised
27 the prices of assault weapons [thereby injuring the plaintiffs].").
28 Here, Fresno Defendants are parties to this lawsuit and Plaintiffs'

1 claims against them can adequately be redressed.

2 II. Motion to Dismiss for Failure to State a Claim

3 A. Legal Standard

4 A complaint must contain a "short and plain statement of the
5 claim showing that the pleader is entitled to relief." Fed. R.
6 Civ. P. 8(a). When considering a motion to dismiss under Rule
7 12(b)(6) for failure to state a claim, dismissal is appropriate
8 only when the complaint does not give the defendant fair notice of
9 a legally cognizable claim and the grounds on which it rests.
10 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In
11 considering whether the complaint is sufficient to state a claim,
12 the court will take all material allegations as true and construe
13 them in the light most favorable to the plaintiff. NL Indus., Inc.
14 v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, this
15 principle is inapplicable to legal conclusions; "threadbare
16 recitals of the elements of a cause of action, supported by mere
17 conclusory statements," are not taken as true. Ashcroft v. Iqbal,
18 ____ U.S. ____, 129 S. Ct. 1937, 1949-50 (2009) (citing Twombly, 550
19 U.S. at 555).

20 B. Analysis

21 Fresno Defendants argue that Plaintiffs fail to state claims
22 under the ADA and the Rehabilitation Act. Title II of the ADA
23 provides that "no qualified individual with a disability shall, by
24 reasons of such disability, be excluded from participation in or be
25 denied the benefits of the services, programs, or activities of a
26 public entity, or be subjected to discrimination by any such
27 entity." 42 U.S.C. § 12132. Similarly, the Rehabilitation Act
28 (RA) states, "No otherwise qualified individual with a disability

1 in the United States . . . shall, solely by reason of her or his
2 disability, be excluded from the participation in, be denied the
3 benefits of, or be subjected to discrimination under any program or
4 activity receiving Federal financial assistance . . .” 29 U.S.C.
5 § 794(a).³ The integration mandate provides: “A public entity
6 shall administer services, programs, and activities in the most
7 integrated setting appropriate to the needs of qualified persons
8 with disabilities.” 28 C.F.R. § 35.130(d). The unjustified
9 institutional isolation of persons with disabilities is “properly
10 regarded as discrimination based on disability” because it
11 perpetuates unwarranted assumptions and diminishes participation in
12 everyday life activities. Olmstead v. L.C. ex rel. Zimring, 527
13 U.S. 581, 597 (1999).

14 To state a valid claim under either the ADA or Rehabilitation
15 Act, a plaintiff must allege that he or she (1) is a qualified
16 individual with a disability; (2) was either excluded from
17 participation in or denied the benefits of a public entity’s
18 services, programs or activities or was otherwise discriminated
19 against by the public entity; and (3) that such exclusion, denial
20 of benefits, or discrimination was by reason of his or her
21 disability. Duval v. County of Kitsap, 260 F.3d 1124, 1135 (9th
22 Cir. 2001).

23 Fresno Defendants argue that Plaintiffs’ claims cannot be
24 brought under these statutes because they are essentially
25 employment actions. See Zimmerman v. Oregon Dept. of Justice, 170
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27 ³The Court will address the ADA and RA claims together because
28 there is no substantial difference in the analysis of the rights
and obligations created by the provisions.

1 F.3d 1169, 1173 (9th Cir. 1999) ("Congress unambiguously expressed
2 its intent for Title II [of the ADA] not to apply to employment.").
3 However, Fresno Defendants ignore the fact that the third and
4 fourth causes of action in this case are not asserted by the wage-
5 earners, but rather by the people with disabilities -- IHSS
6 consumers -- to challenge discrimination in the provision of
7 services. The fact that the cause of the alleged discrimination
8 involves wages paid to IHSS providers does not transform
9 Plaintiffs' disability discrimination claims into employment
10 disputes.

11 Fresno Defendants also assert that, because Plaintiffs seek to
12 prevent Fresno Defendants from reducing IHSS provider wages,
13 Plaintiffs' claims have nothing to do with discrimination on the
14 basis of disability. They rely on Weinreich v. Los Angeles County
15 Metro. Transp. Auth., 114 F.3d 976 (9th Cir. 1997), to support
16 their argument. In Weinreich, the plaintiff challenged his
17 exclusion from a reduced transit fare program for disabled persons
18 on the basis that he could not afford to pay a doctor to certify
19 his disability, which was required by the program. Id. at 978.
20 The Ninth Circuit held that the Transportation Authority's duty to
21 provide "reasonable accommodations" did not apply where the barrier
22 to the plaintiff's participation was not his disability, but rather
23 his financial constraints. Id. Fresno Defendants claim that, like
24 the plaintiff in Weinreich, Plaintiffs in this case have not been
25 discriminated against because the County of Fresno is merely
26 effectuating a budgetary decision, not denying services under the
27 IHSS program. The Court disagrees. Plaintiffs allege that the
28 implementation of Section 12306.1(d)(6) and associated wage

1 reductions will force Plaintiffs who wish to remain in their homes,
2 and are able to do so with the help of in-home care, to enter
3 institutions. Plaintiffs depend upon the services of IHSS
4 providers in order to maintain their social and economic
5 independence. These allegations sufficiently state disability
6 discrimination claims under Olmstead.

7 III. Motion to Sever

8 Federal Rule of Civil Procedure 21 provides, "On motion or on
9 its own, the court may at any time, on just terms, add or drop a
10 party. The Court may also sever any claim against a party." A
11 court, in its discretion, may sever parties, "so long as no
12 substantial right will be prejudiced by the severance." Coughlin
13 v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997). The court may
14 sever the claims against a party in the interest of fairness and
15 judicial economy and to avoid prejudice, delay or expense. Coleman
16 v. Quaker Oats Co., 232 F.3d 1271, 1296-97 (9th Cir. 2000).

17 Fresno Defendants move the Court to sever the claims against
18 them from the claims against State Defendants. They argue that the
19 claims against them require factual determinations specific only to
20 Fresno County and not State Defendants. They assert that, even
21 though Fresno County is the only county named as a Defendant in
22 this case, a county-by-county inquiry must be made to determine
23 whether any reduction in hourly wages paid to IHSS providers will
24 lead to the loss of IHSS providers to the point where IHSS
25 customers will be institutionalized. Fresno Defendants state,
26 "Because an individualized analysis is required to determine each
27 counties' liability, severance will allow for a more focused
28 analysis, consistent with fairness and will avoid prejudice and

1 delay to all parties involved." Motion at 10.

2 Although the litigation may require some Fresno-specific
3 analyses, the Olmstead claims against State Defendants and Fresno
4 Defendants involve numerous overlapping questions of law. The
5 legal claims asserted against State Defendants and Fresno
6 Defendants are the same -- that the reduction of IHSS provider
7 wages will result in the unjustified institutionalization of IHSS
8 consumers. Further, any fact specific inquiry into Fresno County
9 will inform Plaintiffs' Olmstead claims against State Defendants.
10 Thus, judicial economy will be served by considering Plaintiffs'
11 claims against Fresno Defendants in conjunction with their claims
12 against State Defendants. Requiring separate trials on these
13 claims would likely waste judicial resources and risk creating
14 inconsistent results.

15 Fresno Defendants also argue that severing the claims and
16 transferring them to the Eastern District of California would be
17 more convenient and less expensive for all parties because that is
18 where Fresno Defendants, and some of the providers and recipients
19 of care, reside. However, severing the claims against Fresno
20 Defendants might also create a burden on Plaintiffs who reside in
21 Fresno because they would be forced to litigate the same claims in
22 two separate forums.

23 Fresno Defendants also assert that the existence of the
24 provision in the MOU that allows for a reduction in IHSS wages in
25 response to losses of Realignment Act funding provides a unique
26 relationship between Fresno Defendants and IHSS providers. The
27 loss of Realignment Act funding can justify a wage reduction
28 irrespective of Section 12306.1(d)(6). However, at this juncture,

1 the only rate reduction request submitted to the State by Fresno
2 Defendants was based on Section 12306.1(d)(6). Speculation about
3 what Fresno Defendants may do in the future with respect to IHSS
4 provider wages cannot provide the basis for severance.

5 Plaintiffs' claims against Fresno Defendants will not be
6 severed. However, the Court will revisit this issue if, as the
7 case develops, new facts arise that tip the balance in favor of
8 severance.

9 CONCLUSION

10 For the foregoing reasons, the Court denies Fresno Defendants'
11 motions to dismiss or sever the claims against them. Fresno
12 Defendants shall answer Plaintiffs' complaint within twenty days
13 from the date of this order.

14 IT IS SO ORDERED.

15 Dated: 10/15/09



16 CLAUDIA WILKEN
17 United States District Judge
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